

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARIO ATKINS,

Plaintiff,

v.

COMMERCIAL OFFICE INTERIORS; and  
TERRA SERVICES, INC. *d/b/a* Terra Resource  
Group *also d/b/a* Allstaff,

Defendants.

CASE NO. C06-1594-JCC

ORDER

This matter comes before the Court on motions for summary judgment from both Defendants (Dkt. Nos. 39 & 46), Plaintiff's Response (Dkt. No. 50), Defendants' Replies (Dkt. Nos. 51 & 52), and Plaintiff's Amended Opposition (Dkt. No. 57).<sup>1</sup> Having considered the papers submitted, the allegations

---

<sup>1</sup>Plaintiff's Amended Opposition was his second response to Defendants' summary judgment motions and was filed late. *See* Local CR 7(d)(3) (opposition papers to dispositive motions shall be filed and served "not later than the Monday before the noting date"). Defendant Commercial Office Interiors ("COI") asks that the Court either not allow the Amended Opposition or, alternatively, give Defendants the opportunity to reply. (COI Objection (Dkt. No. 58).)

In light of the Federal Rules' policy favoring the resolution of cases on their merits, the Court declines to strike the Amended Opposition. COI's request for an opportunity to respond is moot, as the Court's consideration of the document does not change its decision to grant the motions for summary judgment.

1 in the Complaint, and the record in this case, and finding oral argument unnecessary, the Court hereby  
2 GRANTS Defendants' motions for summary judgment (Dkt. Nos. 39 & 46), as follows.

3 **I. BACKGROUND**

4 Plaintiff Mario Atkins, who is proceeding *pro se*, alleges that Defendants Terra Services, Inc.  
5 ("Terra")<sup>2</sup>, a temporary staffing agency, and Commercial Office Interiors ("COI"), a company for whom  
6 Terra provided temporary staffers, discriminated against him on the basis of his race in violation of Title  
7 VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (Compl. 4 (Dkt. No. 1-2).) On January 23,  
8 2006, Terra assigned Mr. Atkins to work at COI's Washington Mutual job site, located in downtown  
9 Seattle. The parties agree that Mr. Atkins was asked to leave the Washington Mutual job site on the  
10 morning of January 30, 2006, following a meeting with two COI employees, Gordon Hessel and Trevor  
11 Graham. What took place at that meeting and in the days that followed is contested. However,  
12 Defendants bring these motions for summary judgment, and for the purpose of deciding them, the Court  
13 views the evidence presented by Mr. Atkins as true, and resolves all justifiable inferences in his favor.

14 Accordingly, the Court assumes the following facts. During Mr. Atkins' first week on the COI job  
15 site, Terra gave Mr. Atkins the responsibility of informing Terra how many assigned temporary workers  
16 were present at the beginning of each shift. (Massey Decl. ¶ 3 (Dkt. No. 44).) By all accounts, Mr. Atkins  
17 took this duty very seriously. He reports speaking to "everyone" on the job site that Friday, January 27,  
18 2006, letting them know that he had been appointed the "lead"<sup>3</sup> and informing them that Terra "wanted . .  
19 . to do a head check at 6:00 every morning[.]" (Pl.'s Am. Resp. 2 (Dkt. No. 57).) Mr. Atkins claims that  
20

---

21 <sup>2</sup>Plaintiff uses the names "Terra," "All Staff" and "Allstaff" interchangeably, all to refer to the  
22 temporary staffing agency that assigned him to the job site where he alleges he suffered employment  
23 discrimination. Terra Services Inc. (sometimes referred to as "Terra Resource Group") acquired Allstaff  
24 Temporaries in December 2005, approximately one month prior to the incident in question. (Massey  
Decl. ¶ 1 (Dkt. No. 44).) The Court will refer to this Defendant as "Terra."

25 <sup>3</sup>Although Mr. Atkins describes his position as "lead," he does not allege that he had any  
responsibilities above or beyond those of his co-workers other than reporting on their attendance.

1 he spoke to Rhonda Gaona, a Terra employee, that night and suggested to her that she call everyone on  
 2 the job site to let them know about the “changes in the company policy.” (*Id.*) Mr. Atkins also reports  
 3 calling Tony Massey, a division manager at Terra, approximately six times over the weekend “to express  
 4 my concerns, [but] he did not return my phone call.” (*Id.*)

5 Mr. Atkins apparently believed the head count would be performed in the mornings by the  
 6 basement elevator, and at 6:30 a.m. that following Monday, he waited there. When no one came to meet  
 7 him, he went upstairs at approximately 6:50 a.m. and checked in several of his co-workers. Mr. Atkins  
 8 then went back to his work station. (*Id.*)

9 **A. January 30, 2006: Washington Mutual Job Site**

10 At approximately 6:55 a.m., Mr. Hessel and Mr. Graham came to speak to Mr. Atkins at his work  
 11 station. Mr. Atkins recalls the following conversation taking place:

12 Mr. Hessel: Mario[,] I have a problem [*sic*] have 8 unhappy guys and one happy one[.] I’m  
 kicking you off the job.

13 Mr. Atkins: Why, you been giving me compliments all week telling me what a good job [I] was  
 doing.

14 Mr. Hessel: I got people telling me you are telling them where to meet you in the morning.

15 Mr. Atkins: I am only doing what my company asked me to do.

16 Mr. Hessel: Nobody told me anything.

17 Mr. Atkins: You have a cell phone[,] you should call Allstaff.

18 Mr. Hessel: I am not calling nobody, I want you off this job.

19 Mr. Atkins: You are not kicking [me] off this job for that[,] you are kicking me off this job  
 because of [the] color of my skin. You probably never seen an African American  
 lead person.

20 (*Id.*) Mr. Atkins claims that in response to this last comment, Mr. Hessel nodded his head to indicate  
 21 “yes.” (*Id.*)

22 **B. January 30, 2006: Terra’s Response**

23 Mr. Atkins went home and called Mr. Massey at Terra. He told Mr. Massey that he had been  
 24 kicked off the job site for discriminatory reasons. (*Id.*) Mr. Massey denied that COI had discriminated  
 25 against Mr. Atkins and told him that COI was offering Mr. Atkins a job at a different COI work site—a  
 warehouse in Tukwila. Mr. Atkins claims he told Mr. Massey that the job offer “was a bunch of crap.”

1 (*Id.*) However, Mr. Atkins agreed to go to the Tukwila job site in order to prove that this new job offer  
2 from COI was not legitimate. (*Id.*)

3 **C. January 31, 2006: Tukwila Warehouse**

4 When Mr. Atkins arrived at the Tukwila warehouse the following morning, unidentified COI  
5 personnel asked him who he was and told him that no one had asked for him. (*Id.* at 2–3.) Mr. Atkins  
6 was told to stand on the dock, where he waited for approximately 20 minutes before leaving the  
7 warehouse. At that point, Mr. Atkins reports:

8 I went and called [Terra and] told [them] what happen [*sic*] Gary got on the phone and said now  
9 we need to talk about discipline, you walk off the job [.] Gary then said I was fired, I heard  
10 [T]ony [M]assey in the background saying [G]ary [n]o no don't do that [G]ary then said we wiil  
[*sic*] call you back after we figured out what to do . . . with you, I then cut ties with [Terra].

11 (*Id.* at 3.)

12 Mr. Atkins met with an EEOC investigator on February 8, 2006, and signed paperwork alleging  
13 that COI had discriminated against him. (EEOC Intake Questionnaire (Dkt. No. 43 at 8–11).)  
14 Approximately one month later, Mr. Atkins signed a charge of discrimination against Terra, which was  
15 filed with the EEOC and Washington State Human Rights Commission. (Dkt. No. 43 at 13.) The EEOC  
16 issued notices of right to sue in August 2006 (Dkt No. 3 at 5–6), and Mr. Atkins brought this action in  
17 November 2006.

18 **II. SUMMARY JUDGMENT**

19 Summary judgment motions are governed by Federal Rule of Civil Procedure 56, which  
20 provides in relevant part that “[t]he judgment sought should be rendered if the pleadings, the discovery  
21 and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material  
22 fact and that the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c). The party  
23 moving for summary judgment has the burden to show initially the absence of a genuine issue concerning  
24 any material fact. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159 (1970). Substantive law determines  
25 which facts are material, *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 631–32

1 (9th Cir. 1987), and “[o]nly disputes over facts that might affect the outcome of the suit under the  
2 governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*,  
3 477 U.S. 242, 248 (1986).

4 Once the moving party has met its burden, the burden shifts to the nonmoving party to “set out  
5 specific facts showing a genuine issue for trial.” FED. R. CIV. P. 56(e); *see also T.W. Elec. Serv., Inc.*,  
6 809 F.2d at 630. “The evidence of the non-movant is to be believed, and all justifiable inferences are to be  
7 drawn in his favor.” *Anderson*, 477 U.S. at 255. When the non-moving party’s claims are factually  
8 “*implausible*, that party must come forward with more persuasive evidence than would otherwise be  
9 necessary[.]” *Cal. Architectural Bldg. Prods., Inc. v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468  
10 (9th Cir. 1987) (emphasis in original). If the nonmoving party fails to establish the existence of a genuine  
11 issue of material fact, “the moving party is entitled to judgment as a matter of law.” *Celotex Corp. v.*  
12 *Catrett*, 477 U.S. 317, 323–24 (1986).

13 The Ninth Circuit has set a high standard for granting summary judgment in employment  
14 discrimination cases: “we require very little evidence to survive summary judgment in a discrimination  
15 case, because the ultimate question is one that can only be resolved through a searching inquiry—one that  
16 is most appropriately conducted by the factfinder, upon a full record.” *Schnidrig v. Columbia Mach.,*  
17 *Inc.*, 80 F.3d 1406, 1410 (9th Cir. 1996) (internal citations and quotation marks omitted).

### 18 **III. ANALYSIS**

19 Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, makes it illegal for an  
20 employer “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any  
21 individual with respect to his compensation, terms, conditions, or privileges of employment, because of  
22 such individual’s race, color, . . . or national origin.” 42 U.S.C. § 2000e-2(a)(1). A plaintiff may show  
23 violations of Title VII by proving, for example, disparate treatment or a hostile work environment.  
24 *Sischo-Nownejad v. Merced Cmty. Coll. Dist.*, 934 F.2d 1104, 1109 (9th Cir. 1991). Disparate treatment  
25 discrimination generally focuses upon a particular adverse action (e.g., transfer of assignment or

1 termination caused by discriminatory animus), while a hostile workplace claim submits that the  
2 harassment was so severe or pervasive that the work environment itself became abusive.

3 As noted above, Mr. Atkins is proceeding *pro se*, and in various documents filed with the Court  
4 he frames his claim slightly differently. The Complaint itself alleges “termination” of employment.  
5 (Compl. 2, 3 (Dkt. No. 1-2).) However, Mr. Atkins’ response to Terra’s First Requests for Admissions  
6 appears to disclaim any argument that he was, in fact, actually terminated, and instead refers to his claim  
7 as one for *constructive* discharge. (Resp. to First Req. for Admis. 4 (Dkt. No. 40 at 21) (“Denied I was  
8 fired . . . I reported the discriminatory incident . . . both that day and the next . . . no corrective action  
9 was being taken and I was force [*sic*] to tell them I could not come back to work for them (I took a  
10 constructive discharge”). In addition, the civil cover sheet signed by Mr. Atkins and filed together with  
11 his Complaint asserts a “hostile work environment” claim. (Dkt. No. 1-3.) The Court, therefore,  
12 considers this case to be based on two theories of Title VII employment discrimination: (1) disparate  
13 treatment based on racial discrimination; and (2) hostile work environment, also based on racial  
14 discrimination. Each of these distinct Title VII claims has different elements, and the Court considers  
15 them separately. However, first, the Court addresses Mr. Atkins’ claims as made against Terra, the  
16 employment agency that placed him with COI.

17 **A. *Claims Against Terra***

18 Mr. Atkins does not allege that any employees of Terra discriminated against him; instead, he  
19 argues that Terra knew of COI’s allegedly discriminatory conduct and failed to take adequate corrective  
20 measures. This limited allegation is consistent with the Ninth Circuit’s view of Title VII liability—it is  
21 “‘direct, not derivative,’ meaning that ‘[a]n employer is responsible for its own actions or omissions’ and  
22 not vicariously liable for the conduct of others.” *Anderson v. Pac. Mar. Ass’n*, 336 F.3d 924, 941 (9th  
23 Cir. 2003) (quoting *Swenson v. Potter*, 271 F.3d 1184, 1191 (9th Cir. 2001)) (alteration in original).  
24 Similar to the responsibility imposed upon an employer with regards to the harassment of an employee by  
25 a nonemployee, Terra may be held liable only if it either ratified or acquiesced in COI’s discrimination by

1 not taking immediate and/or corrective action when it knew or should have known of the conduct. *See,*  
2 *e.g., Little v. Windermere Relocation, Inc.*, 301 F.3d 958, 968 (9th Cir. 2002).

3 In support of his claim against Terra, Mr. Atkins reports that he spoke to Terra employee Tony  
4 Massey on January 30, 2006, and told Mr. Massey that COI had fired him for discriminatory reasons. The  
5 following day, Mr. Atkins claims to have “cut ties” with Terra, in a phone call he made to them after  
6 leaving the Tukwila warehouse. (Pl.’s Am. Resp. 2 (Dkt. No. 57).)

7 Even if Mr. Atkins’ claims against COI were able to survive summary judgment, the facts alleged  
8 by Mr. Atkins are insufficient as a matter of law to support a Title VII claim against Terra. Mr. Atkins  
9 does not allege that Terra was wrong to offer him placement at the Tukwila warehouse, and in taking  
10 corrective action, employers are entitled to take temporary steps such as alternate placement while  
11 determining whether a claim has merit. Moreover, by his own account, Mr. Atkins quit Terra within 24  
12 hours of suffering the alleged discrimination. In so doing, he made it impossible for Terra to take any  
13 meaningful corrective action. Finally, to the extent that Mr. Atkins claims he was constructively  
14 discharged by Terra, “a plaintiff alleging a constructive discharge must show some aggravating factors,  
15 such as a continuous pattern of discriminatory treatment.” *Schnidrig*, 80 F.3d at 1412 (quoting *Sanchez*  
16 *v. City of Santa Ana*, 915 F.2d 424, 431 (9th Cir. 1990)). A lag time of 24 hours in investigating a  
17 discrimination complaint, without anything more, is insufficient as a matter of law to support such a  
18 claim. For the foregoing reasons, the Court GRANTS summary judgment in favor of Terra on all of Mr.  
19 Atkins’ claims.

20 ***B. Disparate Treatment Claims***

21 Under the framework laid out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), a  
22 Title VII plaintiff alleging disparate treatment must first establish a prima facie case of discrimination. *Id.*  
23 at 802; *Vasquez v. County of Los Angeles*, 349 F.3d 634, 640 (9th Cir. 2003). Once the plaintiff has  
24 made a prima facie case, the burden shifts to the defendant to provide a legitimate, nondiscriminatory  
25 reason for its conduct. If the defendant provides such a reason, the burden shifts back to the plaintiff to

1 show that the employer's offered reason is a pretext for discrimination. *Vasquez*, 349 F.3d at 640.

2       The only evidence Mr. Atkins offers to support his claim that he was removed from the  
3 Washington Mutual job site as a result of his race is his allegation that Mr. Hessel nodded when Mr.  
4 Atkins stated, "You are not kicking [me] off this job [because eight other employees are unhappy with  
5 me] you are kicking me off this job because of color of my skin. You probably never seen an African  
6 American lead person." (Pl.'s Am. Resp. 2 (Dkt. No. 57).) Whether this allegation amounts to direct or  
7 circumstantial evidence of discrimination dictates the proper standards applied in analyzing Mr. Atkins'  
8 disparate treatment claim. While it is "not the province of a court to spin . . . evidence in an employer's  
9 favor when evaluating its motion for summary judgment," *Chuang v. Univ. of Cal. Davis*, 225 F.3d 1115,  
10 1129 (9th Cir. 2000), Mr. Atkins' interpretation of an ambiguous head gesture made by Mr. Hessel is  
11 appropriately defined as circumstantial evidence of discrimination. *See Vasquez*, 349 F.3d at 640 (defining  
12 direct evidence as "evidence which, if believed, proves the fact [of discriminatory animus] without  
13 inference or presumption") (quoting *Godwin v. Hunt Wesson, Inc.*, 150 F.3d 1217, 1221 (9th Cir. 1998))  
14 (alteration in original).

15       Because Mr. Atkins presents only circumstantial evidence of discrimination, he must show that  
16 the four requirements laid out in *McDonnell Douglas* are met in order to make a prima facie case.<sup>4</sup>  
17 Further, although "[t]he requisite degree of proof necessary to establish a prima facie case for Title VII . .  
18 . claims on summary judgment is minimal and does not even need to rise to the level of a preponderance  
19 of the evidence[.]" *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 889 (9th Cir. 1994), where a plaintiff relies  
20 on circumstantial evidence, the showing he must make at the pretext stage of the analysis is impacted:

21       Because direct evidence is so probative, the plaintiff need offer "very little" direct evidence to  
22 raise a genuine issue of material fact. But when the plaintiff relies on circumstantial evidence, that

---

23       <sup>4</sup>The plaintiff must offer some evidence that he: (1) is a member of a protected class; (2)  
24 performed according to the employer's legitimate expectations; (3) suffered an adverse employment  
25 action; and (4) was treated less favorably than other employees similarly situated. *See, e.g., Godwin*, 150  
F.3d at 1220 (citing *McDonnell Douglas Corp.*, 411 U.S. at 802).



1 evidence must be “specific and substantial” to defeat the employer’s motion for summary  
2 judgment.

3 *Coghlan v. Am. Seafoods Co., LLC*, 413 F.3d 1090, 1095 (9th Cir. 2005) (internal citations omitted). In  
4 the instant action, even assuming Mr. Atkins makes the minimal showing required to establish a prima  
5 facie case, he fails to present sufficient evidence for a reasonable factfinder to conclude that the  
6 nondiscriminatory reasons provided by COI for removing Mr. Atkins from the Washington Mutual job  
7 site were pretextual.

8 COI presents evidence supporting its claim that Mr. Atkins was asked to leave the Washington  
9 Mutual job site because he was a disruptive employee who was resistant to instruction and incorrectly  
10 performed his job tasks. (Hessel Decl. ¶ 7 (Dkt. No. 49).) COI claims it received multiple complaints  
11 from Mr. Atkins’ co-workers about Mr. Atkins’ behavior, and submits statements from fellow workers  
12 Andrew Krahn and Ricardo Sims to that effect. (Dkt. No. 43 at 4, 6.) Mr. Hessel recalls that Mr. Atkins  
13 required his fellow temporary employees,

14 to meet on the street every day at 5:45 a.m., and he prevented these coworkers from entering the  
15 jobsite until he led them upstairs. This was contrary to, and interfered with, the instructions I had  
16 specifically given to two or three key [Terra] employees. I had assigned these employees to  
17 different stations/reporting times, and [Mr. Atkins] interfered with and prevented these employees  
18 from reporting as directed.

19 (Hessel Decl. ¶ 8 (Dkt. No. 49).)

20 Mr. Graham and Mr. Hessel report that they initiated the January 30, 2006, conversation in order  
21 to talk to Mr. Atkins about his job performance and remind him that he was not a supervisor and did not  
22 have any authority over his coworkers. (Graham Decl. ¶ 8 (Dkt. No. 48).) During this conversation, they  
23 report that Mr. Atkins was insubordinate, abrupt and abusive, and became increasingly hostile and  
24 agitated, refusing to listen and making it clear that he would not alter his conduct. (*Id.* ¶¶ 9, 10 (Dkt. No.  
25 48); Hessel Decl. ¶¶ 11, 12 (Dkt. No. 49).) Both also deny that race was a factor in the decision, and  
26 point out that of the nine temporary Terra employees working at the site, eight were African-American  
and one was Hispanic, and none of these other employees made any complaints about discrimination.

(Graham Decl. ¶¶ 5, 14, 15 (Dkt. No. 48); Hessel Decl. ¶¶ 5, 14 (Dkt. No. 49).)<sup>5</sup>

Mr. Atkins attempts to rebut COI's claim that it removed him from the Washington Mutual job site for nondiscriminatory reasons by making several allegations attacking COI's credibility. The one accusation relevant to these motions for summary judgment is Mr. Atkins' claim that Terra "got [co-workers] Ricardo Sims and Andrew Krahn to give false statements." (Pl.'s Am. Resp. 3 (Dkt. No. 57).) Mr. Atkins provides no evidence tending to prove that the statements signed by Mr. Sims and Mr. Krahn and filed with the Court are "false." He simply attaches those statements as exhibits to his opposition paperwork and states that they are false. (*Id.* at 3, 7, 8.).

These bare allegations, considered together with an ambiguous head gesture, and the fact that when Mr. Atkins showed up at the Tukwila warehouse, the COI personnel there apparently had not anticipated his arrival, are insufficient to rebut COI's proffered evidence that tends to show Mr. Atkins was removed for nondiscriminatory reasons. To survive summary judgment, Mr. Atkins must provide "specific and substantial" evidence that COI's nondiscriminatory explanations were pretextual—he has not done so. Moreover, Mr. Atkins' response to Terra's First Request for Admissions indicates that he acknowledges that he was not actually terminated; instead, he "took a constructive discharge." (Resp. to First Req. for Admis. 4 (Dkt. No. 40 at 21). In general, "a single isolated incident is insufficient as a matter of law to support a finding of constructive discharge." *Schnidrig*, 80 F.3d at 1411–12 (quoting *Sanchez*, 915 F.2d at 431). A plaintiff must make a showing of "some aggravating factors, such as a continuous pattern of discriminatory treatment." *Id.* at 1412. Accepting all of Mr. Atkins' allegations as true, his working conditions were not so intolerable and discriminatory that a reasonable person would

---

<sup>5</sup>Mr. Hessel and Mr. Graham also claim that Mr. Atkins at no time inquired as to whether he was being removed from the site because of his race, nor did either directly or impliedly suggest to Mr. Atkins that race was a motivating factor in the decision to remove him from the site. (Graham Decl. ¶ 12 (Dkt. No. 48); Hessel Decl. ¶ 13 (Dkt. No. 49).) However, for the purposes of deciding Defendants' motions for summary judgment, the Court assumes that Mr. Atkins made the statement he claims to have made and that he witnessed Mr. Hessel move his head in such a way that made Mr. Atkins believe Mr. Hessel was nodding "yes."

1 feel forced to resign. Accordingly, the Court GRANTS summary judgment in favor of COI on Mr.  
2 Atkins' claims of wrongful discharge, whether viewed as actual or constructive.

3 ***C. Hostile Work Environment Claim***

4 Mr. Atkins next asserts that COI's conduct toward him created a hostile work environment. To  
5 prevail on a hostile work environment claim premised on racial discrimination, a plaintiff must show that:  
6 (1) he was subjected to conduct of a racially discriminatory nature; (2) the conduct was unwelcome; and  
7 (3) the conduct was sufficiently severe or pervasive to alter the conditions of the plaintiff's employment  
8 and create an abusive work environment. *Vasquez*, 349 F.3d at 642.

9 To determine whether conduct was sufficiently severe or pervasive to violate Title VII, we look at  
10 all the circumstances, including the frequency of the discriminatory conduct; its severity; whether  
11 it is physically threatening or humiliating, or a mere offensive utterance; and whether it  
unreasonably interferes with an employee's work performance. In addition, the working  
environment must both subjectively and objectively be perceived as abusive.

12 *Id.* (internal quotation marks and alteration omitted). The elements to prove a hostile work environment  
13 are the same for both racial harassment and sexual harassment, making cases analyzing both types of  
14 harassment relevant here. *Id.*

15 Mr. Atkins complains of only one incident of racially discriminatory conduct—Mr. Hessel's  
16 nodding his head to indicate "yes," when Mr. Atkins accused him of asking him to leave the Washington  
17 Mutual job site because he was an African-American lead person. Although the Ninth Circuit has yet to  
18 decide whether a single incident of harassment can ever be sufficient to establish a hostile work  
19 environment, "[i]f a single incident can ever suffice . . . the incident must be extremely severe." *Brooks v.*  
20 *City of San Mateo*, 229 F.3d 917, 926 (9th Cir. 2000). Mr. Hessel's nodding his head "yes," cannot  
21 qualify as an "extremely severe" incident of racial harassment. To compare, in *Sanchez v. City of Santa*  
22 *Ana*, 936 F.2d 1027 (9th Cir. 1990), the Ninth Circuit held that no reasonable jury could find a hostile  
23 work environment "despite allegations that the employer posted a racially offensive cartoon, made  
24 racially offensive slurs, targeted Latinos while enforcing rules, provided unsafe vehicles to Latinos, did  
25 not provide adequate police backup to Latino officers, and kept illegal personnel files on plaintiffs

1 because they were Latino.” *Vasquez*, 349 F.3d at 643 (citing *Sanchez*, 936 F.2d at 1031, 1036). Mr.  
2 Atkins’ allegations are simply insufficient as a matter of law, and the Court GRANTS summary judgment  
3 in favor of COI on Mr. Atkins’ hostile work environment claim.

4 **IV. CONCLUSION**

5 For the foregoing reasons, Defendants’ motions for summary judgment are GRANTED and  
6 Plaintiff’s Complaint is DISMISSED as to both Defendants. Terra’s Reply contains a request the Court  
7 strike “the irrelevant, unfounded accusations in Plaintiff’s response, as well as the irrelevant and  
8 unauthenticated hearsay documents attached thereto.” (Terra’s Reply 8 (Dkt. No. 51).) This request to  
9 strike is DENIED as MOOT. The Clerk is DIRECTED to CLOSE this case. All pending motions in this  
10 matter are DENIED as MOOT.

11 SO ORDERED this 20th day of December, 2007.

12  
13  
14 

15 John C. Coughenour  
16 United States District Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25